

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

WAYNE GILPATRICK

PETITIONER

VS.

CIVIL ACTION NO. 3:13-CV-259-HTW-LRA

WARDEN EYDIE WINKLE

RESPONDENT

ORDER

This matter is before the court pursuant to the Report and Recommendation [docket no. 15] of United States Magistrate Judge Linda Anderson and the written objection to the proposed findings and recommendation.

On December 23, 2013, Magistrate Judge Linda Anderson entered an order [docket no. 15] recommending the denial of Wayne Gilpatrick's ("Gilpatrick") petition for federal habeas corpus relief.

Pursuant to Rule 72(a)(3) of the Local Uniform Civil Rules of the United States District Courts for the Northern District of Mississippi and the Southern District of Mississippi, Judge Anderson granted petitioner fourteen (14) days to file a written objection.

On January 3, 2014, Gilpatrick filed a motion [docket no. 16] requesting an additional thirty (30) days to reply to Judge Anderson's order. In his motion, Gilpatrick asserted that pursuant to the Mississippi Department of Corrections ("MDOC") procedure, he can only "receive ten (10) items per week from the law library" [docket no.

16] and therefore needed more time to research his response to Judge Anderson's Report and Recommendation.

On January 22, 2014, petitioner submitted his objection [docket no. 17] to Judge Anderson's Report and Recommendation. In his objection, petitioner argues that § 2254 petitions that do not challenge a petitioner's original sentence or conviction are not subject to the Antiterrorism and Effective Death Penalty Act's state law exhaustion requirement. As stated in Judge Anderson's Report and Recommendation, petitioner is incorrect.

Based on the arguments contained within Judge Anderson's Report and Recommendation, this court, having given full consideration to aforesaid objection, finds the same not well taken. Therefore, the Report and Recommendation of the United States Magistrate Judge is hereby adopted as the order of this court.

Gilpatrick's petition is hereby dismissed without prejudice.

SO ORDERED AND ADJUDGED, this, the 31st of January, 2014.

s/ HENRY T. WINGATE

UNITED STATES DISTRICT COURT JUDGE